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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE HUGO MOLINA,

Defendant and Appellant.

G056248

(Super. Ct. No. 17WF1335)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

Sylvia W. Beckman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel, Meredith White and Stephanie H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Jorge Hugo Molina physically forced his domestic partner Norma D. from the inside of a store and outside into a car as Norma resisted.¹ A jury found Molina guilty of kidnapping, committing a domestic battery, and violating a restraining order. The trial court imposed a three-year prison term.

Molina argues that the trial court should have instructed the jurors that in order to find him guilty of kidnapping, they needed to find that he acted with an illegal purpose or with an illegal intent. Molina is mistaken. Kidnapping is a general intent crime, which only requires proof that a defendant intended to commit the act: moving a nonconsenting person a substantial distance through the use of force or fear. (Pen. Code, § 207.)² There is an exception if the person being moved is incapable of giving consent. In those circumstances, the People must prove that the defendant acted with a wrongful intent. But those are not the circumstances here.

Thus, we affirm the judgment.

I

FACTS AND PROCEDURAL BACKGROUND

On June 18, 2017, at about 11:30 a.m., Molina and Norma drove to a gas station and convenience store in Fountain Valley. The couple had been together 13 years and had two children. Norma had difficulty getting her debit card to work at the gas pump. Molina became frustrated and angry; Norma was afraid and ran towards the store to get away from Molina. The couple had been taking methamphetamine that morning; Norma later explained to the police that when Molina is under the influence of methamphetamine “he changes. Like, he’s not um . . . gets a little bit more angry.”

¹ We are using the victim’s first name for privacy reasons; no disrespect is intended.

² All further undesignated statutory references will be to the Penal Code.

Norma ran into the store and ran behind the front cash register area. Norma was crying and asked a store employee to call the police. Molina came running into the store. Molina pushed and pulled Norma out from behind the register area, eventually pushing and pulling her out of the store. Molina repeatedly told Norma, "Let's go." Norma kept saying, "No, no." Once they got outside, Molina forcibly grabbed Norma by the left arm, which was in a cast. Molina kept pulling Norma towards their car, and eventually forced Norma into the passenger seat from the driver's side. Molina then got into the car and drove away.

Several hours later, the police located Molina and Norma, a few miles away from the gas station. A detective noticed that Norma had bruises all over her arms, but she refused to be photographed. The detective noticed that Norma appeared to be under the influence of methamphetamine, but she was coherent and could understand and answer the detective's questions. The police also spoke to Molina, who admitted grabbing Norma at the gas station. Molina was aware that there was a domestic violence restraining order in place. Molina said that the reason he chased Norma was because she was going to "[t]ell on me."

The People charged Molina in a three-count amended information with kidnapping, committing a domestic battery, and violating a domestic violence protective order. (§§ 207, 243, subd. (e)(1), 136.2.) At trial, Molina called no witnesses, nor did he introduce any evidence. The jury found Molina guilty of counts one and two. The court found Molina guilty of count three. The court imposed a three-year prison sentence.

I DISCUSSION

Molina argues that the trial court erred by failing to instruct the jurors on its own motion that the kidnapping charge “required” proof of a “wrongful purpose.” In the alternative, Molina argues that his trial counsel “was constitutionally ineffective for failing to request an appropriate instruction.”

We review instructional error claims de novo. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) We determine whether the trial court fully and fairly instructed the jury on the applicable law. (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) When making this determination, we consider the instructions taken as a whole; we also presume jurors are intelligent people capable of understanding and correlating all of the instructions they were given. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1220, overruled on other grounds by *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.)

A. Legal Principles

“In criminal cases, even in the absence of a request, a trial court must instruct on general principles of law relevant to the issues raised by the evidence and necessary for the jury’s understanding of the case.” (*People v. Martinez* (2010) 47 Cal.4th 911, 953.) That duty extends to “instructions on the defendant’s theory of the case, including instructions “as to defenses “that the defendant is relying on . . . , or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant’s theory of the case.””””” (*People v. Gutierrez* (2009) 45 Cal.4th 789, 824.)

“Generally, to prove the crime of kidnapping, the prosecution must prove three elements: (1) a person was unlawfully moved by the use of physical force or fear; (2) the movement was without the person’s consent; and (3) the movement of the person

was for a substantial distance.” (*People v. Jones* (2003) 108 Cal.App.4th 455, 462 (*Jones*); § 207, subd. (a).) Kidnapping is a general intent crime. (*People v. Magpuso* (1994) 23 Cal.App.4th 112, 118.) That is, the prosecution ordinarily only needs to prove that the defendant intended to commit the unlawful act. (*Ibid.*)

However, there is an exception when the kidnapping victim is incapable of giving consent (e.g., a child, a mentally impaired or unconscious adult, etc.). This is because victims who are incapable of giving consent could “be unlawfully moved without resort to physical force or fear.” (*Jones, supra*, 108 Cal.App.4th at p. 462.) Thus, a kidnapper could escape liability for unlawful conduct (e.g., a person who entices a willing child into a vehicle through deceit). In these situations, the law has long recognized an additional wrongful intent element to the crime of kidnapping. (See *People v. Oliver* (1961) 55 Cal.2d 761, 764-765.)

“Although the defendant’s purpose or motive is generally not an element of a kidnapping . . . as to minors or others incapable of giving consent a person is guilty of kidnapping under section 207 ‘only if the taking and carrying away is done for an illegal purpose or with an illegal intent.’ [Citations.] This additional element precludes a kidnapping conviction against a person who forcibly, but with lawful intentions, moves a child [or others incapable of giving consent].” (*Jones, supra*, 108 Cal.App.4th at p. 462.)

B. Analysis

The trial court instructed the jury on the elements of kidnapping: “To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant took, held, or detained another person by using force or by instilling reasonable fear; [¶] 2. Using that force or fear, the defendant moved the other person a substantial distance; [¶] AND [¶] 3. The other person did not consent to the movement.” (CALCRIM No. 1215.)

The trial court also instructed the jury on general criminal intent: “The crimes charged in this case require proof of the union, or joint operation, of act and wrongful intent. [¶] For you to find a person guilty of the crimes in this case, that person must not only commit the prohibited act, but must do so with wrongful intent. A person acts with wrongful intent when he or she intentionally does a prohibited act; however, it is not required that he or she intend to break the law. The act required is explained in the instruction for that crime.” (CALCRIM No. 250.)

We have reviewed the trial court’s jury instructions in their entirety, and more specifically the instructions regarding the elements of kidnapping and the required general intent for kidnapping. (CALCRIM Nos. 1215 & 250.) Given that the court used the standard jury instructions approved by the Judicial Council, and also that the jury instructions were correct on the law, we hold that the court fully instructed the jurors on the “general principles of law relevant to the issues raised by the evidence and necessary for the jury’s understanding of the case.” (See *People v. Martinez, supra*, 47 Cal.4th at p. 953.) In short, we find no instructional errors.

Molina cites *People v. Daniels* (2009) 176 Cal.App.4th 304 (*Daniels*), for the proposition that in order to find him guilty of kidnapping, the jury needed to find that he was acting with an illegal purpose or an illegal intent. We are not persuaded. In *Daniels*, the jury convicted defendant of kidnapping for rape. (*Id.* at pp. 307-309.) The victim had been intoxicated; the trial court instructed the jury using CALCRIM No.

1201 (Kidnapping: Child or Person Incapable of Consent).³ (*Id.* at p. 324.) The Court of Appeal noted that when a victim is an “incapacitated” adult, a kidnapping conviction requires proof that the defendant acted with “an illegal purpose or with an illegal intent.” (*Id.* at p. 328.) The court found sufficient evidence supporting the wrongful intent instruction: “We find ample evidence in the record to support the instruction. [The victim] testified that, at the point in time when defendant made contact with her in the alley, she was lying facedown, slipping in and out of consciousness, and unable to move or talk. She had no recollection of how she came to be in defendant’s car. A rational jury could have readily concluded that [the victim] was incapacitated and that her state of off-and-on unconsciousness coupled with her inability to move or talk was indicative of a mental impairment that precluded her giving consent at the time that defendant placed her in his car and drove away with her.” (*Id.* at p. 333.)

Molina argues there was evidence Norma was intoxicated. It is true that the detective who interviewed Norma several hours after the gas station incident opined that Norma appeared to be under the influence of methamphetamine. But the detective also testified that Norma was coherent and was able to understand and respond to his questions. Further, unlike the victim in *Daniels*, there was no evidence that during the kidnapping, Norma was somehow incapacitated, or otherwise incapable of giving consent. Quite the opposite. When they first arrived at the gas station, Norma ran away from Molina because she was afraid. Further, when Norma entered the store she

³ “The defendant is charged . . . with kidnapping (a child/ [or] a person with a mental impairment who was not capable of giving legal consent to the movement) [in violation of Penal Code section 207]. [¶] To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant used (physical force/deception) to take and carry away an unresisting (child/ [or] person with a mental impairment); [¶] 2. The defendant moved the (child/ [or] person with a mental impairment) a substantial distance; [¶] [AND] [¶] 3. The defendant moved the (child/ [or] mentally impaired person) with an illegal intent or for an illegal purpose[.]” (CALCRIM No. 1201 [Kidnapping: Child or Person Incapable of Consent].)

immediately asked an employee to call the police. Moreover, as Molina physically forced Norma out of the store, she repeatedly said, “no” and resisted. There is no evidence that Norma was incapacitated or somehow precluded from giving her consent. Thus, the trial court was under no duty to instruct the jury that the People were required to prove that Molina had an unlawful intent or an unlawful purpose when he forcibly moved Norma a substantial distance. (CALCRIM No. 1201.)

Additionally, Molina argues that the trial court should have instructed the jury that the People were required to prove that Molina had an unlawful intent or an unlawful purpose based on his counsel’s closing argument. Molina’s counsel argued to the jury: “Now kidnapping has an element of intent. [Molina] needed to intend the act, he needed to intend to kidnap Norma, and it also has an element of consent as in terms of Norma’s state of mind. [Molina] did not have kidnapping on the brain. He didn’t have *a kidnapping intent* on June 18th, 2017.” (Italics added.)

Here, we are not certain what counsel meant when he argued to the jury that Molina did not have “a kidnapping intent.” But regardless of counsel’s argument, based on the evidence introduced during the trial, the court was not obligated to instruct the jurors on its own motion that they needed to find that Molina acted with any intent beyond what is required under the law: general criminal intent.

C. Ineffective Assistance of Counsel

In the alternative, Molina argues that his counsel provided ineffective assistance by failing to request that the trial court instruct the jury using CALCRIM No. 1201 (Kidnapping: Child or Person Incapable of Consent). We disagree.

A criminal defendant has a constitutional right to effective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 684-686.) To establish such a claim, a defendant must show: 1) counsel’s performance fell below an objective standard of reasonableness; and 2) this resulted in prejudice to the defendant. (*Id.* at pp. 687-688,

691-692.) A failure to request a jury instruction that is not supported by the evidence does not constitute ineffective assistance. (See *People v. Price* (1991) 1 Cal.4th 324, 386-387; see also *People v. Moles* (1970) 10 Cal.App.3d 611, 618 [“In view of our conclusion that the evidence does not warrant such instructions, we conclude that the [ineffective assistance of counsel] argument is untenable”].)

Here, we have determined that an additional intent instruction was not warranted by the evidence. Again, there was no evidence that Norma was incapable of giving her consent during the kidnapping. Thus, we do not find that Molina’s counsel was in any manner ineffective in failing to request an erroneous jury instruction.

III

DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

THOMPSON, J.

GOETHALS, J.